

## NINETEENTH DIVISION

[ CA-G.R. CV NO. 02869, January 30, 2015 ]

**MEDARDO PAGOBO, ATTYORNEY-IN-FACT OF MARCELO EYAS,  
PLAINTIFF-APPELLANT, VS. SULPICIO LAO, MARRIED TO  
SABINA YU, ROBERT YU, VICKY YU, JAMES YU, AND ANTONIO R.  
SANTOS DEFENDANTS-APPELLEES.**

### D E C I S I O N

**LOPEZ, J.:**

Challenged in this Appeal is the Order<sup>[1]</sup> dated 30 July 2007 Decision of the Regional Trial Court, Branch 53, Lapu-lapu City. The dispositive portion<sup>[2]</sup> of which reads:

WHEREFORE, all the foregoing premises considered, the instant case is hereby DISMISSED for lack of cause of action.

FURTHERMORE, the "Motion to Substitute Deceased Plaintiff Marcelo Eyas with his Heirs" filed by the plaintiff's counsel is hereby DENIED.

### FACTS

The facts are as follows:

On 25 March 1996 plaintiff-appellant filed an action for "Declaration of Nullity of Documents, Redemption, etc."<sup>[3]</sup> originally against Sulpicio Lao, married to Sabina Lao. The said defendants filed a Motion to Dismiss<sup>[4]</sup> the complaint on 2 May 1996 on the ground of *res judicata* vis-à-vis Civil Case No. 2192-L, filed by Francisco Eyas, et.al. against Ursulo Eyas, et.al. According to the appellant, this latter case was dismissed by the Lapu-lapu City Regional Trial Court, Branch 53.

On 29 May 1996, Medardo Pagobo, still as Attorney-in-fact of Marcelo Eyas, filed an Amended Complaint<sup>[5]</sup>, impleading additional defendants Robert Yu, Vicky Yu, James Yu, and Antonio Santos.

According to the appellees, after the appellant filed his Amended Complaint, which impleaded additional defendants, they filed a Supplementary Motion to Dismiss<sup>[6]</sup> on 24 February 2003. In an Order<sup>[7]</sup> dated 29 May 2007, the aforementioned motions were denied by the trial court for failure to comply with the requisite notice of hearing.

On 19 June 2007, appellees filed a Motion for Reconsideration<sup>[8]</sup>, which was however denied for being pro-forma.

On 27 June 2007, through collaborating counsel, appellees filed a Second Supplemental Motion to Dismiss<sup>[9]</sup> based on the following grounds:

- a. The action is not being prosecuted in the name of the real-party-in-interest;
- b. Marcelo Eyas died on 17 June 2004, and hence, Medrado Pagobo has lost any authority;
- c. Forum shopping;

Appellant filed a written Opposition<sup>[10]</sup> to the said Second Supplemental Motion. Subsequently, appellant filed a Motion<sup>[11]</sup> to Substitute deceased plaintiff Marcelo Eyas with his heirs.

On 30 July 2007, the RTC issued the challenged Order<sup>[12]</sup>, dismissing the case for lack of cause of action, as the same is not being prosecuted in the name of the real party in interest.

Hence, this appeal.

## **ISSUES**

Seeking the reversal of the challenged Order, appellants assign the following errors for our consideration:

### **I.**

THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN DISMISSING THE CASE ON THE BASIS OF [THE] SECOND SUPPLEMENTAL MOTION TO DISMISS FILED BY REPONDENT-APPELLEES, WHICH IS A VIOLATION OF OMNIBUS MOTION RULE UNDER RULE 15, SECTION 8 IN RELATION TO RULE 9, SECTION 1 OF THE RULES OF COURT;

### **II.**

THE HONORABLE REGIONAL TRIAL COURT LIKewise ERRED IN DISMISSING THIS FOR LACK OF CAUSE OF ACTION, NOT HAVING BEEN FILED AND PROSECUTED FOR AND IN THE NAME OF MARCELO EYAS, THE [SIC] REAL PARTY IN INTEREST.

## **OUR RULING**

The appeal is meritorious.

Since the issues are interrelated, we shall discuss them jointly.

Appellant points out that appellees filed a Motion to Dismiss and Supplementary Motion to Dismiss prior to the filing of a Second Supplementary Motion to Dismiss on 4 July 2007. These motions were denied or dismissed by the court *a quo* for lack of the requisite notice of hearing.

For the appellant, appellees' act of filing piecemeal objections to the complaint were intended to delay his cause of action, in clear violation of the Omnibus Motion Rule. He further argues that appellees are barred from raising the ground that the action

is not prosecuted by or in the name of the real party in interest or lack of cause of action, in their Second Supplemental Motion to Dismiss, because this particular ground for the dismissal of the complaint is deemed waived when they failed to include it in their first Motion to Dismiss, since such ground was already available at that time, but appellees failed to include it.

For their part, appellees counter by saying that the court a quo did not commit any error in considering the Supplemental Motion to Dismiss filed by them.

We agree with the appellant.

Sec. 8, Rule 15 of the Rules of Court embodies what is referred to as the *Omnibus* Motion Rule. The rule is a procedural principle which requires that every motion that attacks a pleading, judgment, order or proceeding shall include all the grounds then available, and all objections not so included shall be deemed waived.<sup>[13]</sup>

A motion to dismiss is a typical example of a motion subject to the omnibus motion rule, since a motion to dismiss attacks a complaint which is not a pleading.<sup>[14]</sup> Following the *omnibus* motion rule, if a motion to dismiss is filed, then the motion must invoke all objections which are available at the time of the filing of said motion. If the objection which is available at the time is not included in the motion, that ground is deemed waived.<sup>[15]</sup> It can no longer be invoked as an affirmative defense in the answer which the movant may file following the denial of his motion to dismiss.<sup>[16]</sup>

In this case, appellees' Supplemental Motion to Dismiss and Second Supplemental Motion to Dismiss<sup>[17]</sup> were clearly in violation of Rule 15, Section 8 in relation to Rule 9, Section 1 of the Rules.

Rule 15, Section 8 of the Rules provides:

Sec. 8. Omnibus motion. - Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or a proceeding shall include all objections then available, and all objections not to included shall be deemed waived.

Rule 9, Section 1, in turn, states:

Sec.1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim.

Applying the foregoing rules, appellees' failure to raise the alleged non-prosecution of the case in the name of the real party in interest, in their very first motion to dismiss was fatal to their cause. They are already deemed to have waived that ground for dismissal of the complaint.

In a very recent case, the Supreme Court even ventured to say that the Rules of